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HOUSE BILL 463

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT
PERTAINING TO INTEREST RATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-67 NMSA 1978 (being Laws 1965,
Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES. --

A. If a tax imposed is not paid on or before the
day on which it becomes due, interest shall be paid to the
state on that amount from the first day following the day on
which the tax becomes due, without regard to any extension of
time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the
armed services of the United States serving in a combat zone
under orders of the president of the United States, interest

underscored material = new
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1 shall accrue only for the period beginning the day after any
2 applicable extended due date if the tax is not paid;

3 (2) if the amount of interest due at the time
4 payment is made is less than one dollar (\$1.00), then no
5 interest shall be due;

6 (3) if demand is made for payment of a tax,
7 including accrued interest, and if the tax is paid within ten
8 days after the date of the demand, no interest on the amount
9 paid shall be imposed for the period after the date of the
10 demand;

11 (4) if a managed audit is completed by the
12 taxpayer on or before the date required, as provided in the
13 agreement for the managed audit, and payment of any tax found
14 to be due is made in full within thirty days of the date the
15 secretary has mailed or delivered an assessment for the tax to
16 the taxpayer, no interest shall be due on the assessed tax;

17 (5) when, as the result of an audit or a
18 managed audit, an overpayment of a tax is credited against an
19 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,
20 interest shall accrue from the date the tax was due until the
21 tax is deemed paid;

22 (6) if the department does not issue an
23 assessment for the tax program and period within the time
24 provided in Subsection D of Section 7-1-11.2 NMSA 1978,
25 interest shall be paid from the first day following the day on

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1 which the tax becomes due until the tax is paid, excluding the
2 period between either:

3 (a) the one hundred eightieth day after
4 giving a notice of outstanding records or books of account and
5 the date of the assessment of the tax; or

6 (b) the ninetieth day after the
7 expiration of the additional time requested by the taxpayer to
8 comply, if such request was granted, and the date of the
9 assessment of the tax; and

10 (7) if the taxpayer was not provided with
11 proper notices as required in Section 7-1-11.2 NMSA 1978,
12 interest shall be paid from the first day following the day on
13 which the tax becomes due until the tax is paid, excluding the
14 period between one hundred eighty days prior to the date of
15 assessment and the date of assessment.

16 B. Interest due to the state under Subsection A or
17 [~~D~~] E of this section shall be:

18 (1) through December 31, 2004, at the rate of
19 fifteen percent a year, computed on a daily basis [~~provided~~
20 ~~that~~];

21 (2) from January 1, 2005 through December 31,
22 2006, at the rate of ten percent a year computed on a daily
23 basis; and

24 (3) on and after January 1, 2007, at the
25 underpayment rate for the period determined in accordance with

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1 Section 6621 of the Internal Revenue Code.

2 C. If a different rate than the rate established by
3 Subsection B of this section is specified by a compact or other
4 interstate agreement to which New Mexico is a party, [~~that~~] the
5 rate specified by the compact or other agreement shall be
6 applied to amounts due under the compact or other agreement.

7 [~~C.-~~] D. Nothing in this section shall be construed
8 to impose interest on interest or interest on the amount of any
9 penalty.

10 [~~D.-~~] E. If any tax required to be paid in
11 accordance with Section 7-1-13.1 NMSA 1978 is not paid in the
12 manner required by that section, interest shall be paid to the
13 state on the amount required to be paid in accordance with
14 Section 7-1-13.1 NMSA 1978. If interest is due under this
15 subsection and is also due under Subsection A of this section,
16 interest shall be due and collected only pursuant to Subsection
17 A of this section. "

18 Section 2. Section 7-1-68 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,
20 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended
21 to read:

22 "7-1-68. INTEREST ON OVERPAYMENTS. --

23 A. As provided in this section, interest shall be
24 allowed and paid on the amount of tax overpaid by a person that
25 is subsequently refunded or credited to that person.

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1 B. Interest on overpayments of tax shall accrue and
2 be paid:

3 (1) through December 31, 2004, at the rate of
4 fifteen percent a year, computed on a daily basis [~~provided~~
5 ~~that~~];

6 (2) from January 1, 2005 through December 31,
7 2006, at the rate of ten percent a year computed on a daily
8 basis; and

9 (3) on and after January 1, 2007, at the
10 underpayment rate for the period determined in accordance with
11 Section 6621 of the Internal Revenue Code.

12 C. If a different rate than the rate established by
13 Subsection B of this section is specified by a compact or other
14 interstate agreement to which New Mexico is a party, [~~that~~] the
15 rate specified by the compact or other agreement shall apply to
16 amounts due under the compact or other agreement.

17 [~~C.~~] D. Unless otherwise provided by this section,
18 interest on an overpayment not arising from an assessment by
19 the department shall be paid from the date of the claim for
20 refund until a date preceding by not more than thirty days the
21 date of the credit or refund to any person; interest on an
22 overpayment arising from an assessment by the department shall
23 be paid from the date of overpayment until a date preceding by
24 not more than thirty days the date of the credit or refund to
25 any person.

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1 E. Interest on a refund or credit of tax paid on a
2 deduction initially disallowed by the department for failure to
3 produce a proper nontaxable transaction certificate or not
4 claimed by the taxpayer on a timely filed original return shall
5 be paid from the date on which the taxpayer produces to the
6 department proof that the nontaxable transaction certificate
7 has been obtained.

8 ~~[D-]~~ F. No interest shall be allowed or paid with
9 respect to an amount credited or refunded if:

10 (1) the amount of interest due is less than
11 one dollar (\$1.00);

12 (2) the credit or refund is made within:

13 (a) fifty-five days of the date of the
14 claim for refund of income tax, pursuant to either the Income
15 Tax Act or the Corporate Income and Franchise Tax Act for the
16 tax year immediately preceding the tax year in which the claim
17 is made; or

18 (b) seventy-five days of the date of the
19 claim for refund of gasoline tax to users of gasoline off the
20 highways;

21 (3) the credit or refund is made within one
22 hundred twenty days of the date of the claim for refund of
23 income tax, pursuant to the Income Tax Act or the Corporate
24 Income and Franchise Tax Act, for any tax year more than one
25 year prior to the year in which the claim is made;

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1 (4) Sections 6611(f) and 6611(g) of the
2 Internal Revenue Code, as those sections may be amended or
3 renumbered, prohibit payment of interest for federal income tax
4 purposes;

5 (5) the credit or refund is made within sixty
6 days of the date of the claim for refund of any tax other than
7 income tax;

8 (6) the credit results from overpayments found
9 in an audit of multiple reporting periods and applied to
10 underpayments found in that audit or refunded as a net
11 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
12 1978;

13 (7) the department applies the credit or
14 refund to an intercept program, to the taxpayer's estimated
15 payment prior to the due date for the estimated payment, or to
16 offset prior liabilities of the taxpayer pursuant to Subsection
17 E of Section 7-1-29 NMSA 1978; ~~[or]~~

18 (8) the credit or refund results from
19 overpayments the department finds pursuant to Subsection F of
20 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
21 taxpayer on the return; or

22 (9) the credit or refund is in settlement of a
23 protective claim, as defined in Section 7-1-26 NMSA 1978;
24 provided that interest shall be paid with respect to the period
25 from the date of the final unappealable decision in the lead

1 case until a date preceding by not more than thirty days the
2 date the credit or refund is paid on the protective claim.

3 [E-] G. Nothing in this section shall be construed
4 to require the payment of interest upon interest."